

UNITED STATES TAX COURT  
WASHINGTON, DC 20217

DRB

Henry J. Langer,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 24035-11 L
	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
	)	
Respondent.	)	

**ORDER AND DECISION**

This section 6330(d)<sup>1</sup> case is before the Court on respondent's Motion for Summary Judgment, filed October 11, 2012. Petitioner's Objection to respondent's motion was filed on November 13, 2012. The Court has determined that a hearing on respondent's motion would serve no useful purpose. See Rule 50(b)(3).

The facts relied upon by respondent in support of the motion are not in dispute and are easily summarized in the following numbered paragraphs:

1. In a notice of deficiency dated April 21, 2005 (deficiency notice), respondent determined a deficiency in, and imposed a penalty with respect to, petitioner's 2001 Federal income tax.
2. Petitioner received the deficiency notice and disputed the deficiency in a proceeding before this Court commenced pursuant to section 6213(a) in docket no. 13884-05 (deficiency case).
3. In Langer v. Commissioner, 378 Fed. Appx. 598 (8th Cir. 2010), aff'g T.C. Memo. 2008-255, the decision entered in the deficiency case was affirmed upon petitioner's appeal.
4. Petitioner did not post a bond during the pendency of the appeal. See sec. 7485(a).

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<sup>1</sup>Section references are to the Internal Revenue Code of 1986, as amended. Rule references are to the Tax Court Rules of Practice and Procedure, available on the Internet at [www.ustaxcourt.gov](http://www.ustaxcourt.gov).

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5. The deficiency and related amounts were assessed in due course (underlying liability) consistent with this Court's decision entered on June 18, 2009, in the deficiency case. See sec. 6215.
6. By letter dated May 24, 2010, petitioner was notified that respondent intended to levy (proposed collection action) in order to collect the underlying liability. See sec. 6330(a).
7. Petitioner requested an administrative hearing in order to challenge the proposed collection action. See sec. 6330(b).
8. At the administrative hearing petitioner challenged the existence and/or the amount of the underlying liability; he also complained that the underlying liability was prematurely assessed. He did not request a collection alternative to the proposed collection action.
9. In a Notice of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330, dated September 13, 2011 (notice of determination), respondent determined that the proposed collection action is an appropriate collection action with respect to the underlying liability.
10. The petition filed in this case challenges the determination made in the notice of determination upon two grounds: (1) the decision in the deficiency case is erroneous; and (2) the underlying liability was improperly assessed while petitioner's appeal of the decision in the deficiency case was pending.

Petitioner's objection to respondent's motion advances only his claim that respondent's motion should be denied because the decision in the deficiency case is "in error". Nevertheless, we consider both challenges to the proposed collection action as contained in the petition and find neither has merit.

Petitioner attempts to use this proceeding as a collateral attack on the Court's decision in the deficiency case. This, in effect, is a challenge to the existence of the underlying liability, and as respondent's motion points out, petitioner may not challenge the existence or the amount of the underlying liability in this proceeding because he received a notice of deficiency with respect to that liability. See sec. 6330(c)(2)(B). Furthermore, because petitioner did not post a bond as contemplated by section 7485(a), the assessment of the underlying liability was not stayed during the pendency of the appeal of the decision in the deficiency case. See Rule 192. The assessment of the underlying liability, therefore, was not premature as petitioner claims.

In all other respects respondent's motion establishes that respondent has complied with the requirements set forth in section 6330, and nothing in the record suggests otherwise.

We are satisfied that there are no material facts in dispute in this case and that respondent is entitled to decision as a matter of law. That being so, resolution of this matter upon summary adjudication is appropriate. See Rule 121(b); Sundstrand Corp. V. Commissioner, 98 T.C. 518, 520 (1992), aff'd, 17 F.3d 965 (7th Cir. 1994).

The reflect the foregoing, it is

ORDERED that respondent's motion is granted. It is further

ORDERED AND DECIDED that respondent may proceed with the collection as determined in the notice of determination.

**(Signed) Lewis R. Carluzzo**  
**Special Trial Judge**

ENTERED: **FEB 22 2013**